IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 32880 of 2004(L)

AGAINST THE ORDER IN OS 204 1994 IN
EA.100/2004 of MUNI-MAGI.COURT,MANNARKAD

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PETITIONER:

T. ABDULLA BY POWER OF ASTTORNEY HOLDER
USMAN THUDIKKODAN HOUSE, VETTATHUR AMSOM DESOM,
PERINTHALMANNA, MALAPPURAM DISTRICT.

BY ADV. SRI.V.K.MOHAMMED YOUSUF

RESPONDENT:

YOUSAF, S/O. POOZHIKKUNNAN
ABU HAJI, KARKKIDAMKUNNU DESOM,
ALANALLUR AMSOM, MANNARKKAD TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 32880/04)

PETITIONER'S EXTS.:

EXT.P1(a): PHOTO COPY OF THE AFFIDAVIT IN E.P.36/01.

EXT.P1(b): PHOTO COPY OF THE PETITION IN AFFIDAVIT.

EXT.P2: PHOTO COPY OF THE ORDER DATED 12.7.2004.

EXT.P3: PHOTO COPY OF THE MEMO DATED 8.1.02.

EXT.P4: PHOTO COPY OF THE ENDORSEMENT ON THE DOCKET DATED 3.2.03.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.32880 of 2004

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Dated: 13th June, 2007

JUDGMENT

Ext.P2 order passed by the execution court on an application for stay filed by the judgment-debtor on the ground that A.S.No.28/01 preferred by him against the decree is not disposed of is under challenge in this Writ Petition under Article 227 of the Constitution.

2. Heard Mr.V.K.Mohammed Yousuf, learned counsel for the petitioner and Mr.V.Chitambaresh, learned counsel for the respondent.

3. Having considered the rival submissions, I am of the view that there will be no warrant for interfering with Ext.P2 in the supervisory jurisdiction under Article 227 of the Constitution which is visitorial in nature. As rightly noticed by the court below, pursuant to a conditional order of stay granted by the appellate court the petitioner filed an application before the execution court for receiving the security offered by him. But that application was dismissed by the execution court as early as on 3.2.2003. It is without challenging that order that the petitioner filed E.A.100/04. The learned Munsiff-Magistrate was right in her view that in the light of the dismissal order on the application earlier filed for the acceptance of the

security, there is no scope for stay of the execution proceedings by the execution court itself, more so since the appeal was even at that time pending before the appellate court. Neither Mr.Mohammed Yousuf nor Mr.Chitambaresh, counsel for the respondent were able to inform me as to whether the appeal preferred by the petitioner has been finally disposed of. In all probability the appeal is disposed of. If the appeal is disposed of, naturally the executable decree will be that of the appellate court. Under these circumstances, the challenge against Ext.P2 will fail. However, the Writ Petition will stand disposed of issuing the following directions:

If the Sub Court, Ottappalam has not yet disposed of A.S.No.28/2001 preferred by the petitioner against the judgment and decree in O.S.No.204/97, that court will hear and dispose of that appeal at the earliest and at any rate within one month of receiving copy of this judgment. Even if the appeal is already disposed of confirming the judgment and decree of the Munsiff-Magistrate court, then also the execution court will entertain and pass appropriate orders with notice to the decree-holder on any application to be preferred by the petitioner for grant of instalment facility in the

matter of discharging the decree debt.

srd **PIUS C.KURIAKOSE, JUDGE**